IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12-09-2006

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

W.P.No.25832 of 2006 &

M.P.Nos.1 & 2 of 2006

K.Chinnathambi .. Petitioner

Vs

Vellore District Consumers
Co-operative Wholesale Stores Ltd
rep by its Deputy Registrar/Special Officer
Officers Lane
Vellore 632 001. .. Respondent

Petition filed under Article 226 of Constitution of India for the issuance of Writ of certiorarified mandamus to call the concerned records from the respondent, quash the order of the respondent dated 30.01.2006 bearing Na.Ka.No.1008/06/E2 and the order of the respondent dated 31.01.2006 bearing Na.Ka.No.1008/2006 E.2 and consequently direct the respondent to pay all the terminal benefits due to the petitioner towards gratuity, provident fund, leave wages etc along with interest at the rate of 18% from 01.02.2006 onwards till payment.

For Petitioner : Mr.Balan Haridass
For Respondents : Mr.A.Edwin Prabakar
Government Advocate

O R D E R

The writ petitioner challenges the order of the respondent dated 30.01.2006 under which the respondent placed the petitioner under suspension on the ground that he his responsible for causing stock deficit and a criminal case is pending. In those circumstances, by invoking the Clause 13 of the Special Bye-laws, the petitioner was placed under suspension. Thereafter, by a subsequent order dated 31.01.2006, the date of which the petitioner has attained the age of superannuation on completing 58 years, the petitioner was not allowed to retire. The said orders are challenged mainly on the ground that as per Special Bye-laws, framed in respect of the service conditions of the employees of the respondent Co-operative Stores, there is a Clause for placing the

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employee under suspension during his service but there is no Clause not to allow the employees to retire on superannuation.

2. The learned counsel for the petitioner would submit that on the other hand the Special Bye-laws specifically states that an employee shall not be allowed to work on completion of 58 years and in respect of Peons it is 60 years.

3. In the absence of any Special Bye-laws, enabling the respondent to proceed with the disciplinary enquiry after the date of attainment of superannuation, the respondent absolutely has no power to keep the petitioner by not allowing him to retire, which could only be for the purpose of initiating disciplinary proceedings.

4. In the present case as the learned counsel for the petitioner has pointed out that even assuming otherwise that in respect of the same allegation there was an order dated 24.12.2002 by the respondent imposing punishment of stoppage of two increments with cumulative effect. That apart, it is the contention of the learned counsel for the petitioner that after attaining the age of superannuation there is absolutely no power on the part of the respondent to proceed with any disciplinary proceedings which includes the power of the respondent in not allowing the petitioner to retire.

5. A combine reading of the orders of the respondent dated 30.01.2006 and 31.01.2006, which are relating to the order of suspension and also the order not allowing the petitioner to retire respectively, would show that the purpose of passing the order dated 31.01.2006 is to proceed with the enquiry in respect of allegation which is made in one of the impugned orders dated 30.01.2006 in which the petitioner was placed under suspension by invoking Clause 13 of the Special Bye-laws.

6. Therefore, the point involved in this case is as to whether the respondent has any power to retain the petitioner in service beyond the age of superannuation.

7. A reference to the Special Bye-laws as correctly pointed out by the learned counsel for the petitioner, would show especially in Special Bye-laws No. 5 that the petitioner cannot be kept in service beyond completion of 58 years which was originally 55 years. The Special Bye-laws 5(a) reads as follows;-

> "5(a) No person shall be appointed to the service of the stores if he has on the date on which he assumes the post, attained the age of 30 years, provided that in the case of a person who is already employed in another co-operative institution and had joined its service before

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> he attained his 30th year, the restriction as regards the age at entry in to service shall not apply. No employee shall be continued in the service of the stores, if he has attained the age of 55 years if not with-standing anything contained in this bylaw, the age of retirement in respect of the peons shall be 60 years."

Except the age of 55 years has been increased to 58 years there is no other change.

8. A reading of the Special Bye-laws No.13(a) clarifies that the disciplinary authority has the power to impose punishment and also to keep the petitioner under suspension. Admittedly, the power of keeping the employee under suspension is not available in any clauses where the employee attains superannuation.

9. The legal aspects in respect of disciplinary proceedings against the delinquent employee after supperannuation in the absence of such enabling provisions was decided before the Honourable Apex Court and the same was reported in 1999 (2) L.L.N.993 BHAGIRATHIJENA vs. BOARD OF DIRECTORS, ORISSA STATE FINANCIAL CORPORTIONS wherein the Honourable Apex Court has held that there was no provision under the regulation to proceed with the disciplinary enqiry after the period of superannuation by the employees. The Honourable Apex Court has ultimately held in para 7 as follows;

> "7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conduction a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on June 30, 1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

10. In W.P.Nos.13412 & 13413/2003 dated 1.12.2003 this Court, while referring to the above said judgment of the Honourable Apex

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Court, has held that the order of punishment imposed on the employees after the date of their retirement was not valid in law and it was brought to my notice that the respondent in the instant case and in the above mentioned case are one and the same.

11. A similar order was passed by this Court in W.P.No.30222/2003 dated 16.02.2004 by setting aside the enquiry notice in respect of a retired employee.

12. In yet another decision of the Division Bench of this Court in W.P.Nos.18952 & 18953/2003 dated 31.08.2006, while referring the above said Honourable Apex Court judgment, having found that in the Tamil Nadu Cements Corporation Limited Service Rules there is no provision reserving the right to employer to continue the disciplinary proceedings after superannuation, held that the disciplinary proceedings is illegal.

13. In view of the number of judicial pronouncements in this regard, I have no hesitation to come to the conclusion that the impugned orders of the respondent dated 30.01.2006 and 31.01.2006, under which, the respondent has not allowed the petitioner to retire after the period of superannuation on the basis that criminal case is pending against the petitioner, are not sustainable in law. It is suffice to say that the respondent shall allow the petitioner to retire as per the Special Bye-laws which contemplate that beyond 58 years the employees shall not be retained in service.

14. In view of the same, the writ petition is allowed and the impugned orders are set aside. However, this order shall not affect the proceedings in the criminal case which is pending against the petitioner. It is also made clear that the respondent shall pay all the monetary benefits due to the petitioner by virtue of the retirement and such amount shall be paid within a period of 2 weeks from the date of receipt of copy of this order, if there is no other legal impediments. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

The Deputy Registrar/Special Officer,
Vellore District Consumers
Co-operative Wholesale Stores Ltd
Officers Lane
Vellore 632 001.

1 cc to Mr.Balan Haridass, Advocate, Sr. 42299
1 cc to Mr. Additional Government Pleader, Sr. 42380

W.P.No.25832 of 2006

NA (CO)
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